FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 479/2007
(Subha Manikrao Thakre & 2 ohers **VERSUS** Sakhubai Damodar Pande & 2 others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Khandalkar, counsel for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 28th September, 2007.

Heard the learned counsel for the appellant.

The appellants are the original defendants. A suit was filed by the plaintiff Sakhubai against the defendants and the State of Maharashtra on a plea that the father of the plaintiff and the defendant no.1 Sulbha was the owner of the suit properties and he died intestate fifty years prior to the institution of the suit. Till the death of the mother of the plaintiff and the defendants, the entire suit property was managed and maintained by their mother Bhimabai. Though the plaintiff had demanded partition and separate share in the property in the year 1991, the defendant did not partition the suit properties and hence, the plaintiff instituted the present suit.

The defendant nos.1 and 2 i.e. sister and the nephew of the plaintiff filed the written statement and resisted the suit claim but, admitted that the plaintiff and the defendant no.1 are real sisters. They, however, denied that after the death of their father,

the entire property was managed and maintained by their mother Bhimabai. The defendants then pleaded that the suit property was already partitioned in the year 1965 and the names of the parties were mutated in the records in respect of their separate shares. According to the defendants, since the property was already partitioned since the year 1965, the suit filed by the plaintiff was liable to be dismissed.

The trial Court framed the issues,and after considering the evidence tendered by the parties on record, held that the defendants have failed to prove the partition of the year 1965. The Court held that the plaintiff was entitled to half share in the suit property as the defendant had failed to prove that there was partition of the suit properties.

The findings recorded by the trial Court were upheld by the first appellate Court in the appeal preferred by the defendant nos.1, 2 and 4. Since the suit property was acquired by the State of Maharashtra under the provisions of the Land Acquisition Act, the trial Court directed the land acquisition officer to pay 50% of the compensation to the plaintiff.

The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law.

The second appeal is, therefore, dismissed

with no order as to costs.

JUDGE

APTE